

-unq uñt be weiv ni vitsludlraq, señoríateñ
la lañceñ a eviññ qaqqas etimallat dññl ññet
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**MEMORANDUM respecting the Distribution of
Business between the Senate and the House of
Commons of the Parliament of Canada.**

—o:—

I.—OBSERVATIONS ON THE ENGLISH PROCEDURE.

—o:—

The question of facilitating the business of Parliament, by the introduction during each session of a larger number of public and private bills in the Senate than has been hitherto the case, has been a matter of debate on several occasions in that chamber, and of comment in treatises on the procedure of the Canadian Legislature. Last session, in the House of Commons, the Honourable Mr. Blake briefly referred to the matter and asked the government whether, in their opinion, it would not be expedient to take it up. No step, however, was taken in this direction in the House of Commons, and the debates in the Senate have never been followed by any practical measure in the way suggested.

The same subject obtained much consideration for years in the Parliament of England, where the number of private bills are sometimes extremely large. In years of pressure the result was almost a deadlock in legislation. Opposed bills came before the House of Lords at so late a period in the session, that all were hurried and some were laid aside.

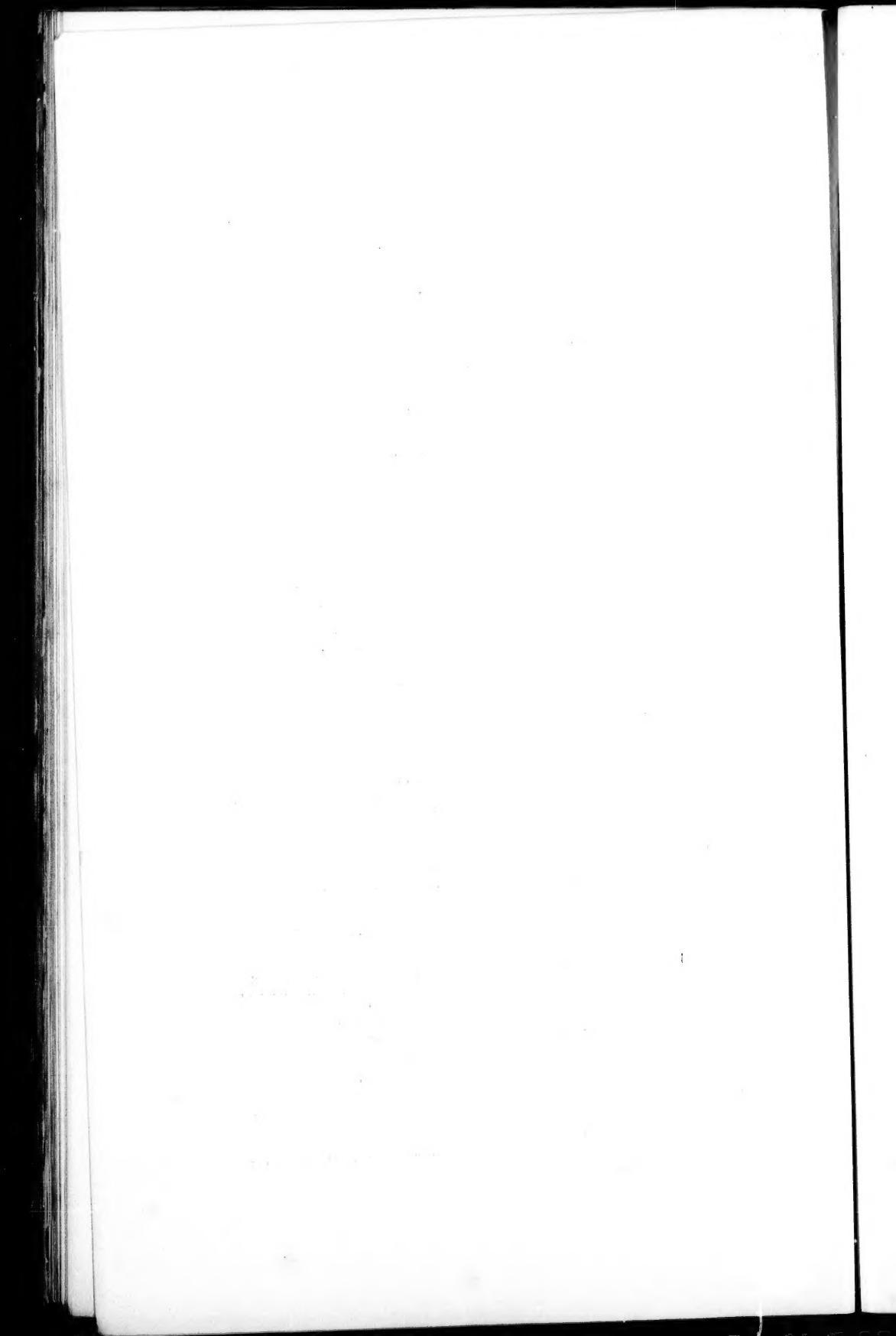
Before proceeding to review the condition of public and private business in the Canadian Parliament, it will be useful to note the experience of the English Houses in this matter.

The difficulty in England arose for years chiefly from the constitutional rule,—persistently and rigidly enforced by the House of Commons,—which prevented the Lords from initiating any legislation which involved the imposition of tolls and charges of any class. In order to obviate this serious difficulty the Commons, at the suggestion of Lord Redesdale in the Lords, agreed at last to waive a privilege which had ceased in modern times to be important or expedient save in Supply, and to allow all private bills to be apportioned equally between the two Houses. By the present Standing Orders the Lords may consider bills where the fees and tolls “are imposed in respect of benefit taken, or service rendered under the act, and in order to the execution of the act, and are not made payable into the treasury or exchequer, or in aid of the public revenue;” and when such bills “shall be a private bill for a local or personal act;” or if they refer to “rates assessed and levied by local authorities for local purposes”

Consequently the basis of a better despatch of business in the two Houses was at once laid. A further improvement was made by the adoption of the following Standing Order :—

“The Chairman of the Committee of Ways and Means shall, at the commencement of each session, seek a conference with the Chairman of Committees in the House of Lords, for the purpose of determining in which House of Parliament the respective Private Bills should be first considered, and such determination shall be reported to the House.”

By reference to the Journals of the English House of Commons, every session, it will be seen, that, among the first business transacted, is the presentation of a report under this rule. The bills to be initiated in the Lords deal with Railways, Harbours, Corporations of Cities, Water and Gas Companies, Infirmarys and Asylums, Trust, Banking, and other Stock Companies, Vestries and Parochial Boards, Navigation Companies, and the numerous classes of subjects that naturally and necessarily fall under private legislation.



In order to facilitate the examination of Private Bills, previous to the session of Parliament, it is a Standing Order of the Commons :

" Every petition for a private bill, headed by a short title, descriptive of the undertaking or bill, corresponding with that at the head of the advertisement, with a declaration, signed by the agent, and a printed copy of the bill annexed shall be deposited in the Private Bill Office on or before the 21st of December and such Petition, Bill and Declaration, shall be open to the inspection of all parties."

It is also a rule that copies of all bills shall, at the same time, be deposited with the Board of Trade, Treasury, or other department under whose special supervision they may come.

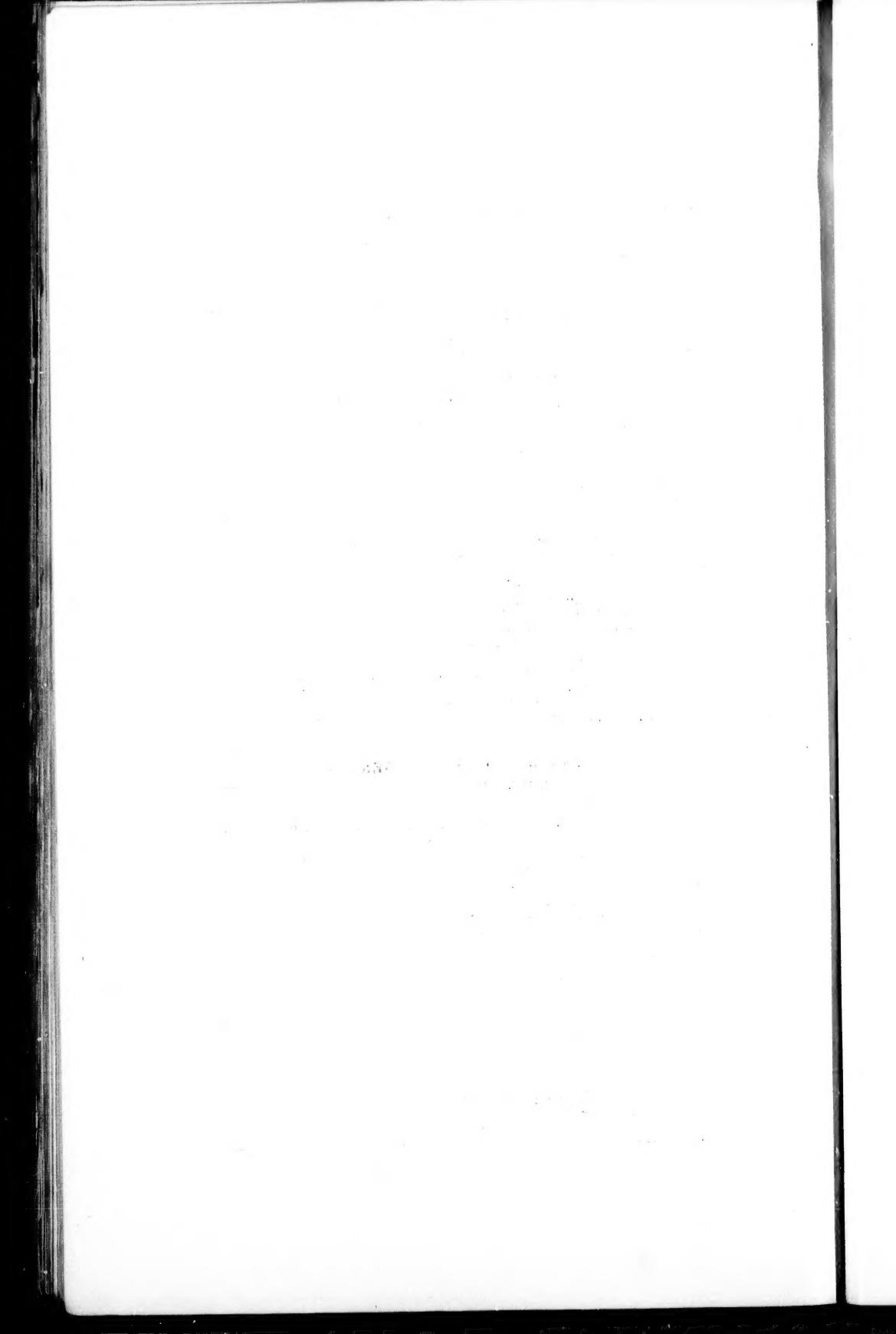
Another Standing Order provides that, " In all cases where application is intended to be made for leave to bring in a Bill relating to any of the Two Classes of Private Bills, Notice shall be given stating the objects of such intended application, and the time at which copies of the Bill will be deposited in the Private Bill Office."

All these rules are intended to facilitate an examination of the Bills *before* the Session by the Chairmen of Committees in the two Houses, and by the Examiners of Petitions, whose duty it is especially to report upon the proposed distribution between the two Houses and compliance or non-compliance with the Standing Orders.

With respect to the Examiners of Petitions and Standing Orders, just mentioned, it is necessary to explain that, some years ago, the Lords adopted a most convenient arrangement, which dispensed with a double proof of all those orders which are common to both Houses, except in certain cases. They appointed, as " examiners of Standing Orders," the gentlemen who hold the office of examiners of petitions in the House of Commons. By this arrangement the examiners, acting on behalf of both Houses, now adjudicate upon all facts relating to the compliance or non-compliance with the Standing Orders, and the Standing Orders Committee in each House, determines upon the facts as reported or certified to them, whether the Standing Orders ought or ought not to be dispensed with. All parliamentary authorities agree that of all the improvements, connected with private bill legislation, none have been so signal as those in which the examiners were constituted, and both Houses concurred for the assimilation and joint proof of their Standing Orders.

I may mention here that the duties of the Chairmen of Committees and of the Examiners in the English Houses are quite onerous, as the rules and regulations affecting the introduction, the provisions and the passage of Private Bills are very complicated and rigidly enforced, while their observance entails a great expense on petitioners and promoters, and makes the business of parliamentary agents and counsel a most lucrative profession in England. The rules in Canada are much more simple and the expenses of private bill legislation relatively small, and suited to the conditions of a country where it is necessary to give every encouragement to enterprise and capital. Some reasons why these rules are so full and rigid in England will be stated towards the end of this memorandum.

Another duty discharged by the Chairman of the Lords' Committees may here be mentioned in order to show the various steps taken to facilitate the progress of a bill through the Lords, and to make its provisions as perfect as possible. While a bill is before the Commons, it is the practice to lay it before the Chairman in question, and give effect to his observations during the progress of the bill through the Commons. The amendments suggested in the Lords are thus embodied with the other amendments before the bill has passed the Commons; and unless the bill be opposed, its progress through the Lords is at once easy and expeditious.



One of the plans suggested in England from time to time, avowedly for the purpose of facilitating public business, has been the substitution of a single inquiry, for the existing double inquiry into Contested Bills. This plan was much discussed by a Commons' Committee of 1853. Mr. Lowe, one of its members, moved, "That the House of Lords be invited to concur in some arrangement by which a Private Bill may be investigated, at the same time and place before a Committee of the two Houses, or by which one joint tribunal may be formed from both Houses." The opinion in the Committee was divided, and the Chairman eventually gave a casting vote against the proposal, which was then supported by Mr. Gladstone and other eminent parliamentarians. Similar proposals were made in subsequent years. In 1869 a joint Committee of Lords and Commons was appointed "to consider whether any facilities could be given for the despatch of business in Parliament." This Committee considered it expedient that opposed Private Bills should be referred to a joint committee consisting of three members of each House, and were of opinion "that this change would introduce greater simplicity and rapidity of proceeding and a corresponding economy." This plan included joint Standing Orders Committees. Upon an opposed bill, the chair was to be taken by a member of the House to which the bill belonged. A bill, after being reported, could be always recommitted to the former or some other joint Committee as might be expedient.

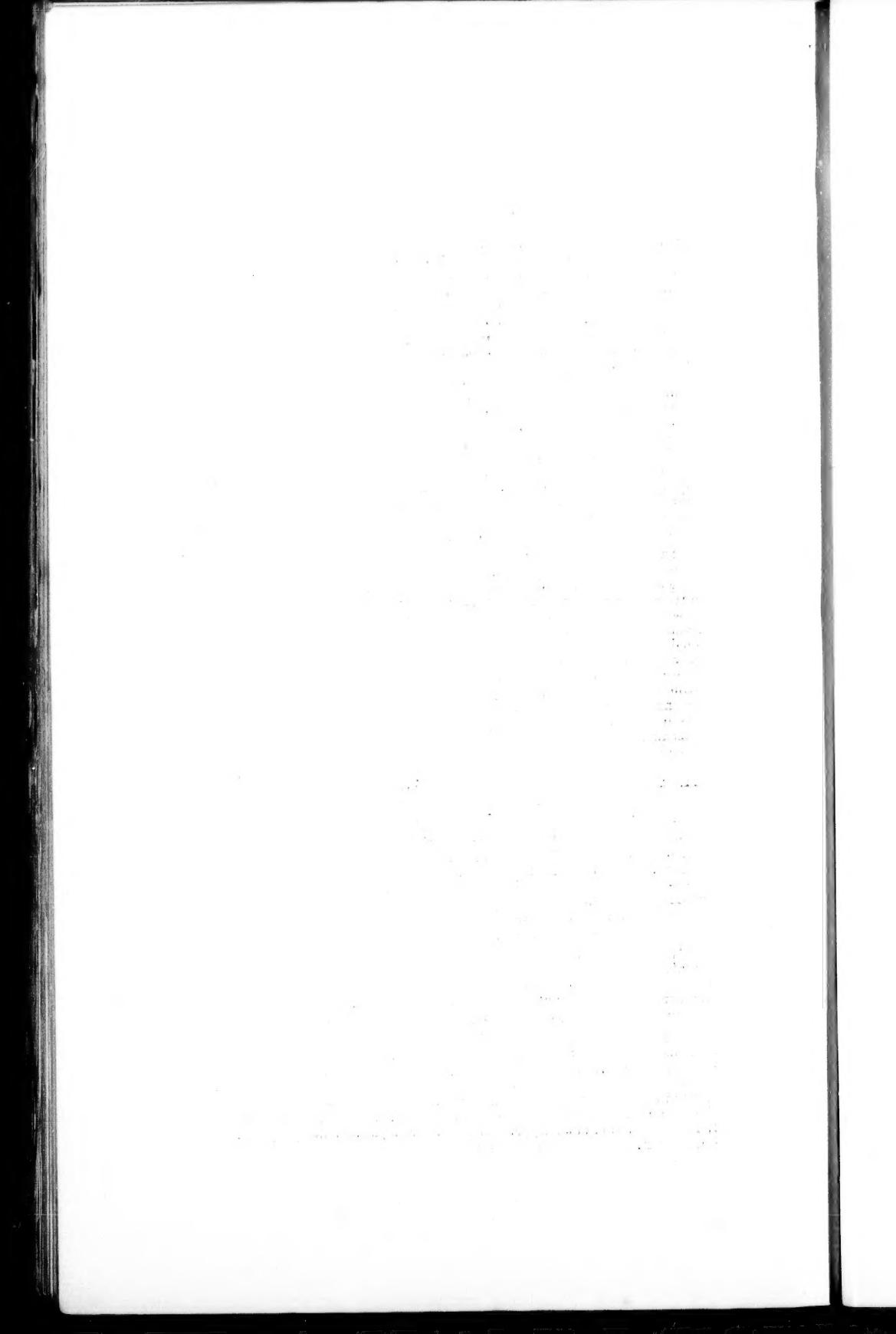
The sentiment of Parliament, however, has been, so far, in favour of the two Houses dealing separately with private bills, and of each of them acting as a court of appeal on the decisions of the other. Sir Vernon Harcourt, who once practised with success at the parliamentary bar, told the House of Commons in 1872 that "over and over again he had known decisions on private bills reversed by the House of Lords, and never recollect any in which that reversal was not right." That was natural, he added, because upon a second hearing mistakes were corrected, evidence was strengthened, and the case better understood. Besides the general testimony borne by Sir William Harcourt and other high authorities, other facts have been adduced to show that public interests would suffer were there not such a Court of Review as the House of Commons or House of Lords affords when the bill comes before either in the ordinary course of procedure.

II.—SUGGESTIONS FOR THE CONSIDERATION OF THE CANADIAN HOUSES.

We may now proceed to review the present condition of business in the Senate and the House of Commons of Canada, and consider whether it is not possible to follow the practice of the English Parliament in this particular; but before doing so, it is interesting to note here that it has become the established custom in the colony of South Australia to introduce all Private Bills in the Legislative Council, thereby securing greater expedition in passing, owing to the pressure of business in that House being so much less than in the Assembly.

The rules of the Canadian Houses, with respect to the initiation of Private Bills, imposing fees and charges for services performed and not in aid of the public revenue, are the same as those of the English Houses, and consequently no difficulty can arise on this account with respect to the presentation of a greater number of Private Bills in the Senate.

It is not necessary here to refer at length to the evidence that the records of the Parliament of Canada have afforded us for years of the unequal division of business between the Senate and the Commons, which has obliged the former House to adjourn for days and even weeks at a time, and has forced them towards the very close of the session to consider practically the bulk of important legislation, when there is relatively little time for that deliberate discussion and review, which seems to be essentially the function of an Upper House under a parliamentary system of government.



In the Appendix are two tabular statements (A. & B.) showing the following facts for each year during five years :

1. Sittings and adjournments of the Senate, each session.
2. Government, Public and Private Bills introduced respectively in the Senate and the House of Commons, each session.

The facts set forth in the second table may be considered, in a measure, responsible for the facts disclosed in the first table. But by reference to the second table it will be seen that there has been a decided increase in the number of public bills initiated in the Senate of late years. In 1890, there were 17 government and public bills brought down to the Commons from the Senate against 9 in 1886, 5 in 1887, and 3 in 1888. Of this number, 13 were government bills.

In the case of Private Bills, there has been no change in the same desirable direction. In 1890, there were 81 Private Bills introduced in the Commons and only six presented in the Senate, and of the latter three were Divorce Bills, which have been always initiated in the upper house. The same facts are disclosed by reference to the Journals of the Senate for each session since 1887.

It is quite obvious that if the promoters of Private Bills are free to select the House they choose for the initiation of their legislation, they will, as was the case originally in England, always go to the House of Commons, under the belief that if they pass the ordeal of that body, the consideration in the upper house will be easy enough and a matter of secondary importance. The question then occurs whether it is possible or expedient to follow the English practice and divide legislation between the chambers without reference to the wishes of promoters.

In England, we have seen the rules provide for:—

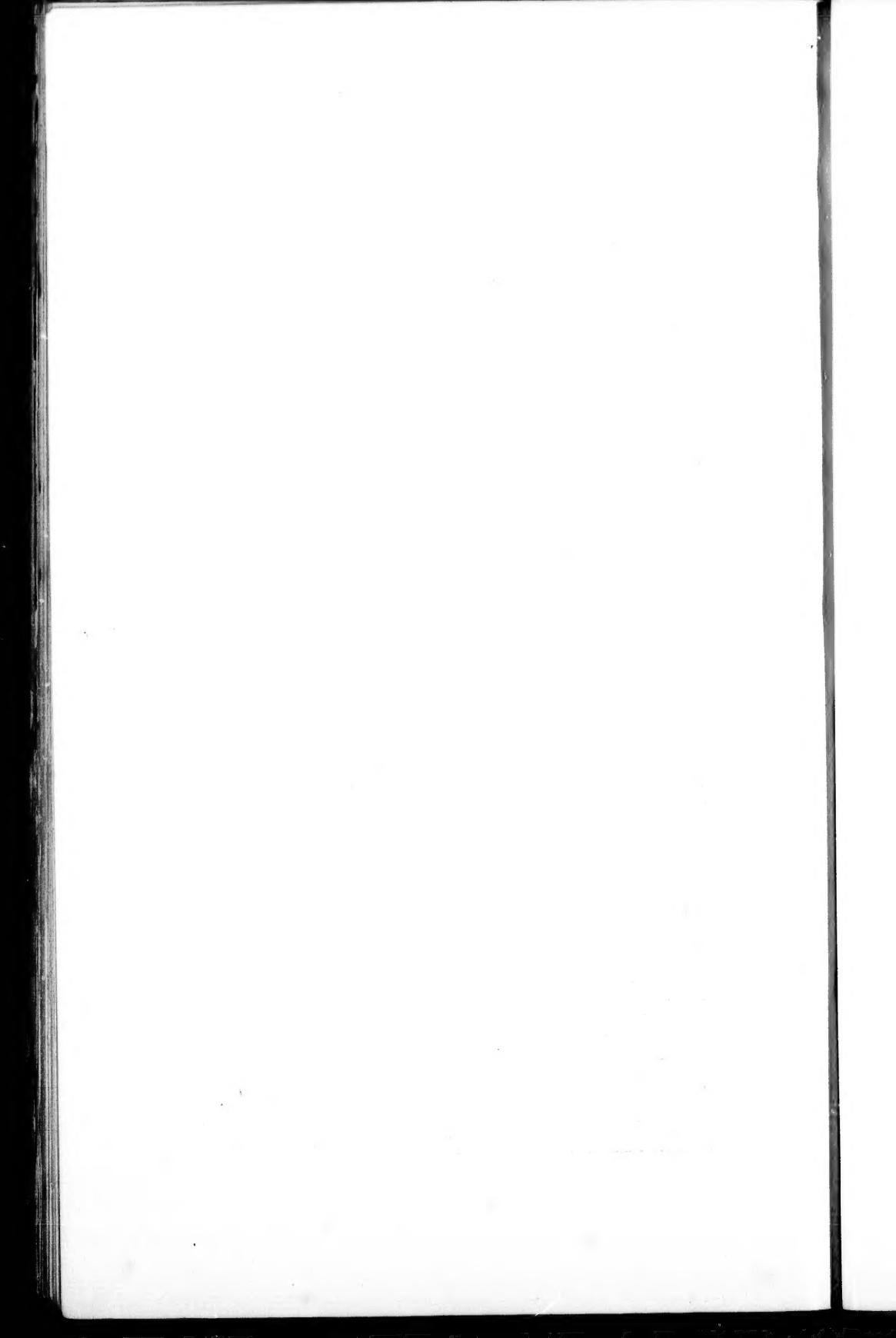
1. The presentation of petitions and bills at a fixed date, before each session of Parliament.
2. The examination of bills and petitions by permanent Chairmen of each House, and by Examiners—all these being officials of the Houses.

The Canadian House of Commons have already the following rule providing for the printing and the presentation of Bills before the commencement of each session.

"Any person seeking to obtain any private bill, giving any exclusive privilege or profit, or private or corporate advantage, or for any amendment of any former act, shall be required to deposit with the Clerk of the House, *eight* days before the meeting of the House, a copy of such bill in the English and French languages, with a sum sufficient to pay for translating and printing the same, etc."

This rule has never been practically enforced. A table in the Appendix (C) shows the number of bills sent in to the Clerk of the Commons before and after the session under this rule during the past five years. It is noteworthy, however, that there appears to have been an improvement in this direction for the past two years. As a matter of fact, the number sent in under the rule were on the very eve of the session. The majority still continue to be presented during the session.

It seems that the Canadian rule should have gone further, and in accordance with the English Standing Order, should have required that both petition and bill be forwarded at the same time. As the rule is now, petitions are presented "after the first ten days," and private bills "after the first two weeks of each session"—a term invariably continued for several weeks, in the case of both petitions and bills, during the session, on the recommendation of the Committee on Standing Orders.



Notices of all intended applications for private bills are required to be published in the Official Gazette and newspapers of the district interested in the proposed legislation, for at least two months before the consideration of the petition. This rule is constantly suspended on the recommendation of the Standing Orders Committee on sufficient reasons being given to the Committee by the promoters.

In the House of Commons there is already practically all the machinery necessary to carry out the procedure in vogue in England, should the existing rules relating to Private Bills be amended in the same direction.

The Chairman of Committees of the Whole or of Ways and Means could easily discharge the duties of the same officer in England, whose not least important functions are those connected with the progress of Private Bills in Parliament.

In the Canadian House of Commons, the duties of examiners of petitions and bills have been practically discharged by Clerks of Private Bills Committees. The Clerk of Standing Orders follows in the newspaper all the notices for private bills, and informs the Chairman whether the Standing Orders have been complied with or not. The Committee are mainly governed by his report on these preliminaries and other points relative to the notice and the petition.

In the case of Railways, the most important subjects that come before the Committees—involving as they do, large questions of public policy and sectional or local interests—the House of Commons not long since adopted a Model Bill (see appendix E), "in accordance with which all Private Bills for acts of incorporation of, or in amendment of acts incorporating Railway Companies shall be drawn"—copies being obtained on application to the Clerk of the House.

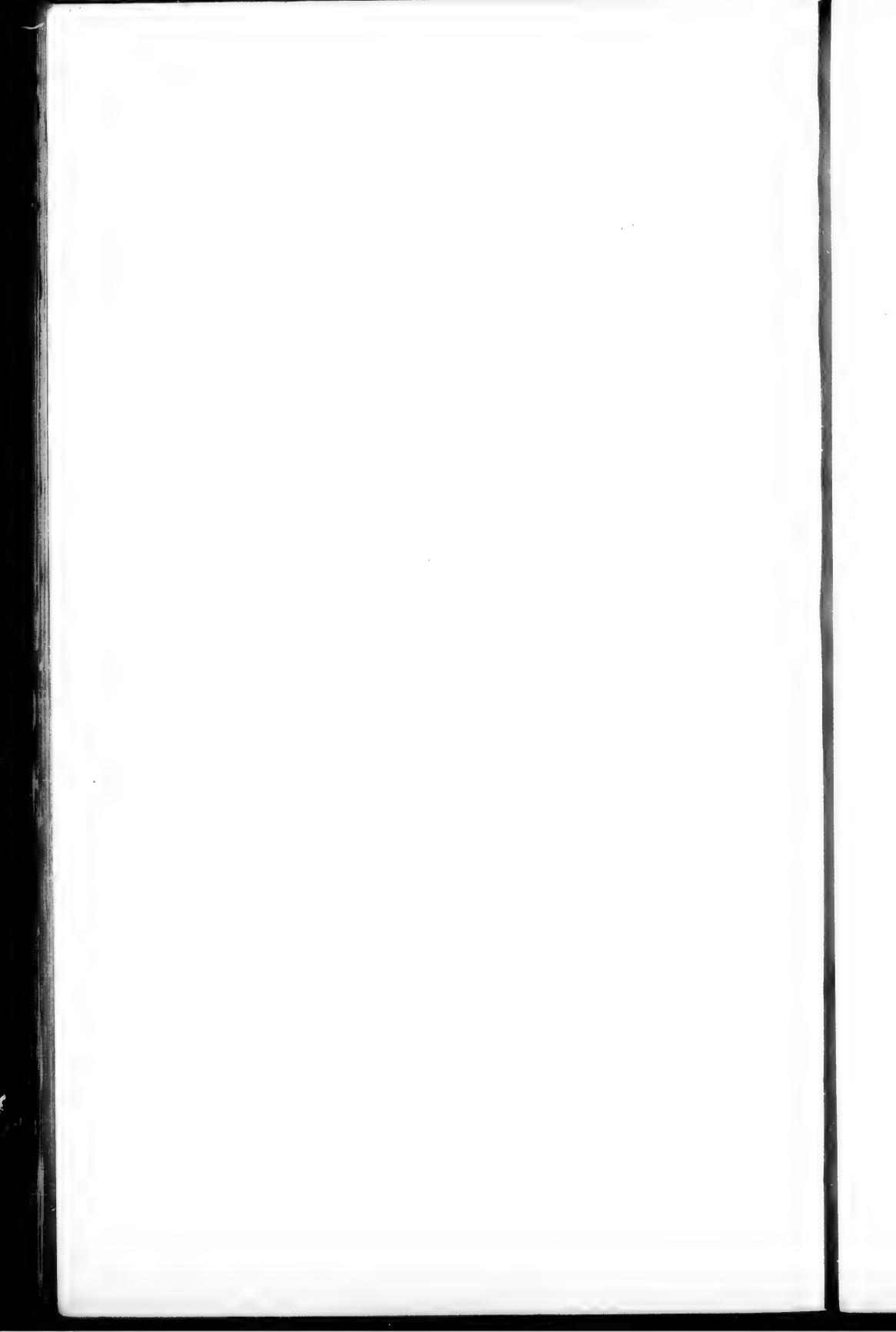
This Standing Order has much facilitated legislation, and saved the time of the large and important Committee which supervises this class of bills.

It is now provided that before any Railway Bill is considered by the Committee, "a report shall be first submitted to the Committee by the Examiner, stating that he has examined the same, and has noted, opposite each section, any variations from the provisions contained in the Model Bill; and to ensure uniformity, the Examiner shall revise and certify every Private Bill passed by the Committees, and the reports thereon, before they are presented to the House."

This duty is now performed by an efficient Clerk of the Private Bill Committees in connection with the Law Clerk, and has worked on the whole satisfactorily. Under the direction of the Clerk of the House, these officers print and supervise all private bills. It is their duty also to report on all amendments in the Senate to Commons' Bills, before they are taken up in the latter body.

If the Chairman of Committees were to have his duties enlarged in accordance with English practice so as to act in conjunction with the Officers of the House, an improvement would be made, and a greater guarantee for efficient legislation given to the House.

But the Senate does not appear to possess the same efficient machinery that exists in the House of Commons for the initiation and consideration of Private Bill legislation. This arises chiefly from the fact that so few Private Bills have ever been introduced in that House that the attention of its members has never been fully directed to the subject, and its staff for important Committee work of this character is very limited. In the case of Divorce Bills, to which the Senate have chiefly devoted themselves, their rules have been much improved of late years, and a more legal and judicial character given to their procedure. In this particular the House



of Commons has been relieved of a troublesome class of legislation, and we have an illustration of the benefit that Parliament may derive from increasing the facilities of the same House for the consideration of other classes of private bills. The Senate has no more constitutional right to consider Divorce Bills than the House of Commons; it is a matter which the Senate has taken up in conformity with the practice of the House of Lords, and the Commons has acquiesced in the convenience of the arrangement.

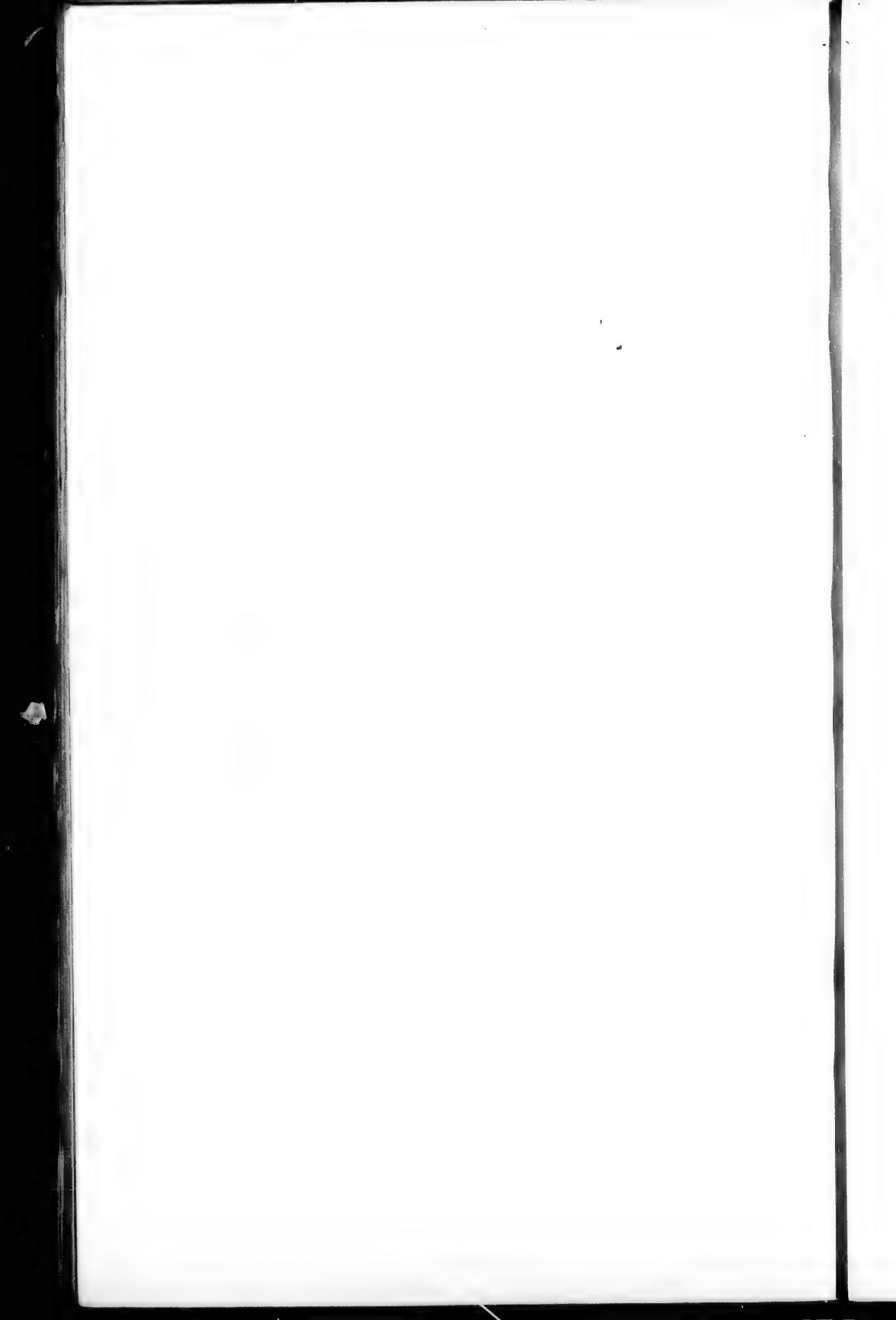
The Senate has no permanent Chairman of Committees like the House of Lords, but it is desirable that one should be appointed by that body in case of a change in the direction now suggested.

The Senate has not adopted the rule respecting a Model Bill simply because the necessity has never arisen—the introduction of Railway Bills in that House being exceptional. Indeed, the Commons and Senate Rules should be uniform in all particulars as in England.

With this short reference to the rules and regulations respecting Private Bills in the two Houses, we may now inquire whether it would not be practicable and expedient to make the following changes in their procedure in order to facilitate the progress of Private Bill legislation in Parliament, and give that additional employment and responsibility to the Senate which its members have more than once demanded in the interests of that branch of the legislature. These suggestions are mainly based on the English practice as briefly set forth in this memorandum, and on the simple rules and machinery that already exist in the Houses so far as they can be made applicable with a few amendments:—

1. All petitions and bills should be deposited in the hands of the Clerk of Parliament or of the Clerk of the House, on or before the 24th day of December [or one month before the meeting of Parliament], and printed in the two languages at once.
2. The notice published in the *Gazette* and newspapers, under existing rules, should state the date when the petition and bill will be presented.
3. At the beginning of each session, the Chairman of Committees of the House of Commons shall seek a conference with the Chairman of Committees of the Senate for the purpose of determining in which House the respective private bills shall be first considered and shall report such determination to the House.
4. It shall be the duty of the Chairman of Committees, with the assistance of the Officers of the House, to examine all private bills, whether opposed or unopposed, and to call the attention of the House, and also, if he think fit, of the Chairman of the Committee on every private bill, to all points which may appear to him to require it; and at any period after a bill has been referred to a Committee, he is at liberty to report any special circumstances relating thereto to the House.
5. The promoters in depositing a petition in the House by the 24th of December as aforesaid [or one month before the meeting of Parliament], shall place on the back thereof the name of the member who is to present it at the proper time in the House, and shall do the same in the case of the Bill when it is to be presented in the House.

This foregoing is a summary of the new rules that would probably enable the two Houses to ensure a better division of labour in an important class of legislation. But in other respects the business may be facilitated by forming a joint Committee of Standing Orders, instead of having separate Committees in the two Houses reporting on petitions and compliance or non-compliance with the Standing Orders relating to notices. It would be inadvisable certainly to have one joint tribunal as more than once suggested in England on the Bills themselves, since a review by another



House is valuable as experience has shown us in Canada under our present procedure. But one joint Committee in the preliminary stage of petitions and notices may be useful. This Committee should be formed at the very beginning of the session, as soon as the Address in answer to the Speech is agreed to.

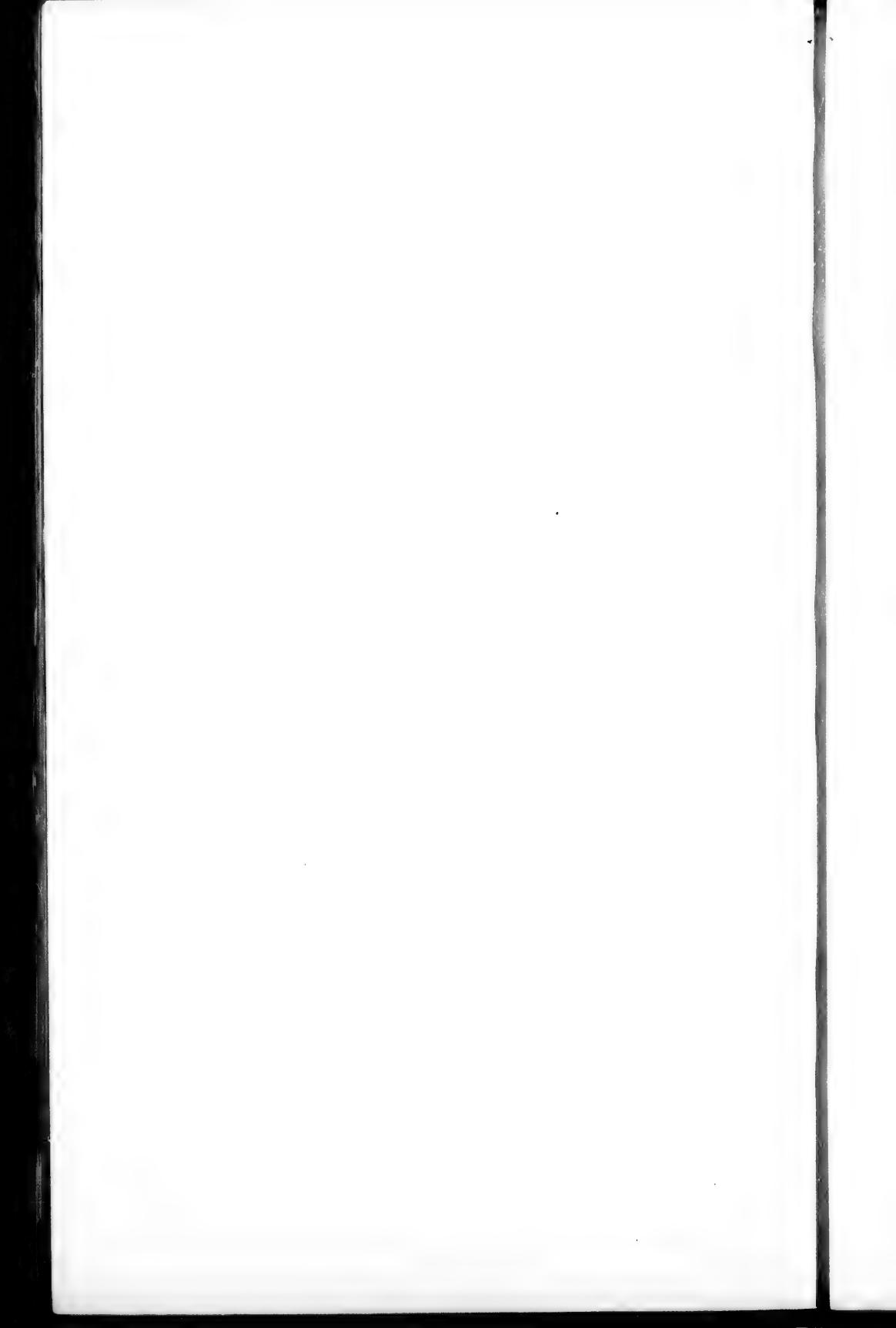
Experience under even the present rule of eight days shows that were all private bills required to be presented for examination and printing for a much longer period before the beginning of each session, as is suggested above in accordance with English practice, the public business of both Houses, will under any circumstances be much facilitated.

No doubt the present staff of the Senate, as already intimated, is inadequate for the additional labour that would be entailed on them; but two clerks at least for Committees ought to be sufficient. But this is a matter of which I write with hesitation and in any case a joint Committee on Standing Orders could be in charge of the present efficient officers of the House of Commons, and the Senate clerk detailed for other Committee work.

In the House of Commons little or no additional expense need be incurred by the proposed changes. In the Senate the Chairman of Committee, should be paid, and two or three clerks of committees might be added to the present staff. In any case the total amount of fees received every session for private bill legislation is quite large, (See appendix D), and it would be very easy to increase the fees by at least ten per cent, that is from \$200 to \$220 on each bill.

Enough has been said in this review to show the difficulties that stand in the way of the proposed changes. *The success of the whole system must rest in a great measure on the early presentation and printing of bills, before the session, so as to ensure their division at once between the two Houses.* Hitherto there has been great laxity on all sides, both on the part of promoters, and of the House itself, in affording too many facilities for the suspension and even evasion of the rules which, as even now framed, are intended to press forward private legislation. If promoters and parliamentary agents know that the rules will be rigidly enforced, as in England, and there is no reason whatever for allowing negligence or procrastination on the part of legal counsel, the difficulty that I apprehend may soon disappear, and the business of the Houses be facilitated.

In one respect, however, there may be some disadvantage from a public point of view in giving the Senate the initiation of a large proportion of important private bills, involving questions of public policy and sectional or private interests. The important heads of Departments, like Finance, Railways, Public Works, Interior, and Customs, &c., sit in the House of Commons, and on its Private Bill Committees. For instance, the Chairman of the most important Committee, Railways and Canals, is the present Minister of Public Works. Ministers are always present on all the Committees to protect the public interests. This practice does not prevail in England, where the Standing Orders are more complicated and numerous in order to guard public interests and relieve the Ministers so far as practicable from attendance on Committees. In Canada the presence of Ministers is unavoidable. In the Senate the members generally have not only the leisure to give full attention to this class of legislation, but there are not a few men in that body especially competent to deal with Banking, Commerce, and other subjects of public interest. The absence of important heads of departments in the Senate, however, may be considered as tending to render that body less competent than the Commons to watch over private legislation. This is a question on which I do not venture to dwell, and will only suggest that, in all probability, if the Chairmen of Committees devote themselves to their duties, Ministers will find their responsibilities much lessened; since it would be the special functions of those chairmen, as in England, to examine and report on every bill that may affect the public interests.



By having copies of all petitions and bills deposited before the session, and in the hands of the public departments, the government would find their present work much lessened.

This memorandum is merely suggestive, and the writer would recommend that, in case it is deemed expedient to consider the whole question practically, a joint committee be formed in the Houses at the beginning of next session, and that the initiation be taken by the Senate in the form of some such motion as the following :—

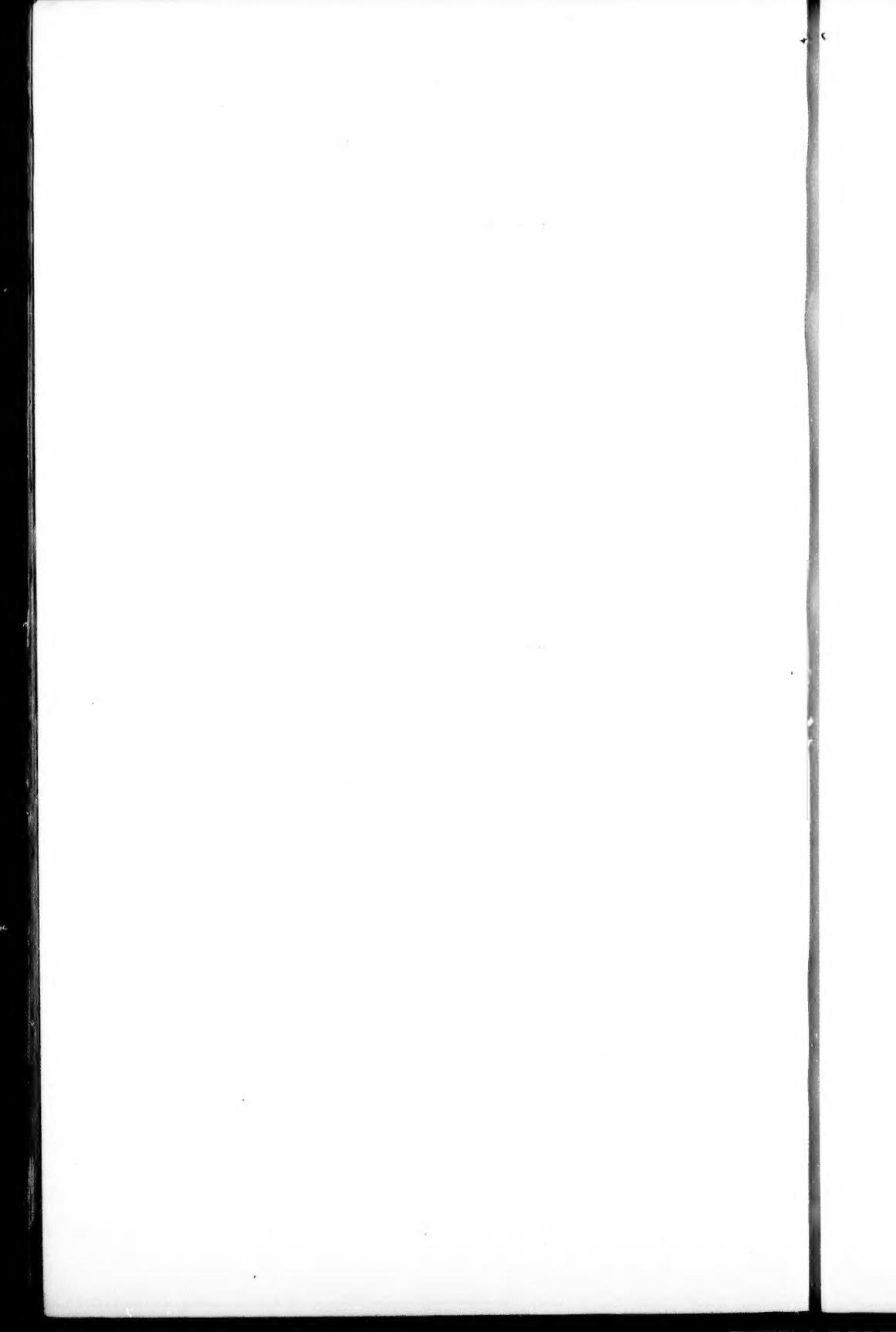
"That a Committee composed of the Honourable Messrs.

be appointed to join with a Committee of the House of Commons to consider whether any facilities can be given for the discharge of business in Parliament, especially in relation to private bill legislation.

"That the said Resolution be communicated to the House of Commons."

J. G. BOURINOT,
Clerk of the Commons.

HOUSE OF COMMONS, OTTAWA,
January 12th, 1891.



APPENDIX A.

TABLE showing number of Commons Bills—Classes thereof, etc., and Senate Bills brought down to Commons, for each Session from 1886 to 1890, inclusive :

	1886	1887	1888	1889	1890
COMMONS BILLS—					
Government and Public Bills.....	72	73	70	68	57
PRIVATE BILLS—					
Referred to Railway Committee.....	36	54	51	46	64
" Banking ".....	15	18	7	12	13
" Private Bills ".....	11	10	5	7	4
Total Private Bills, Commons.....	62	82	63	65	81
SENATE BILLS (brought down)—					
Government Bills.....	7	4	3	12	13
Public Bills.....	2	1	0	3	4
Private Bills.....	6	5	3	1	3
Divorce Bills.....	1	5	3	4	3
Total Private Bills, Senate.....	7	10	6	5	6
Grand Total of all Bills.....	150	170	142	153	161

APPENDIX B.

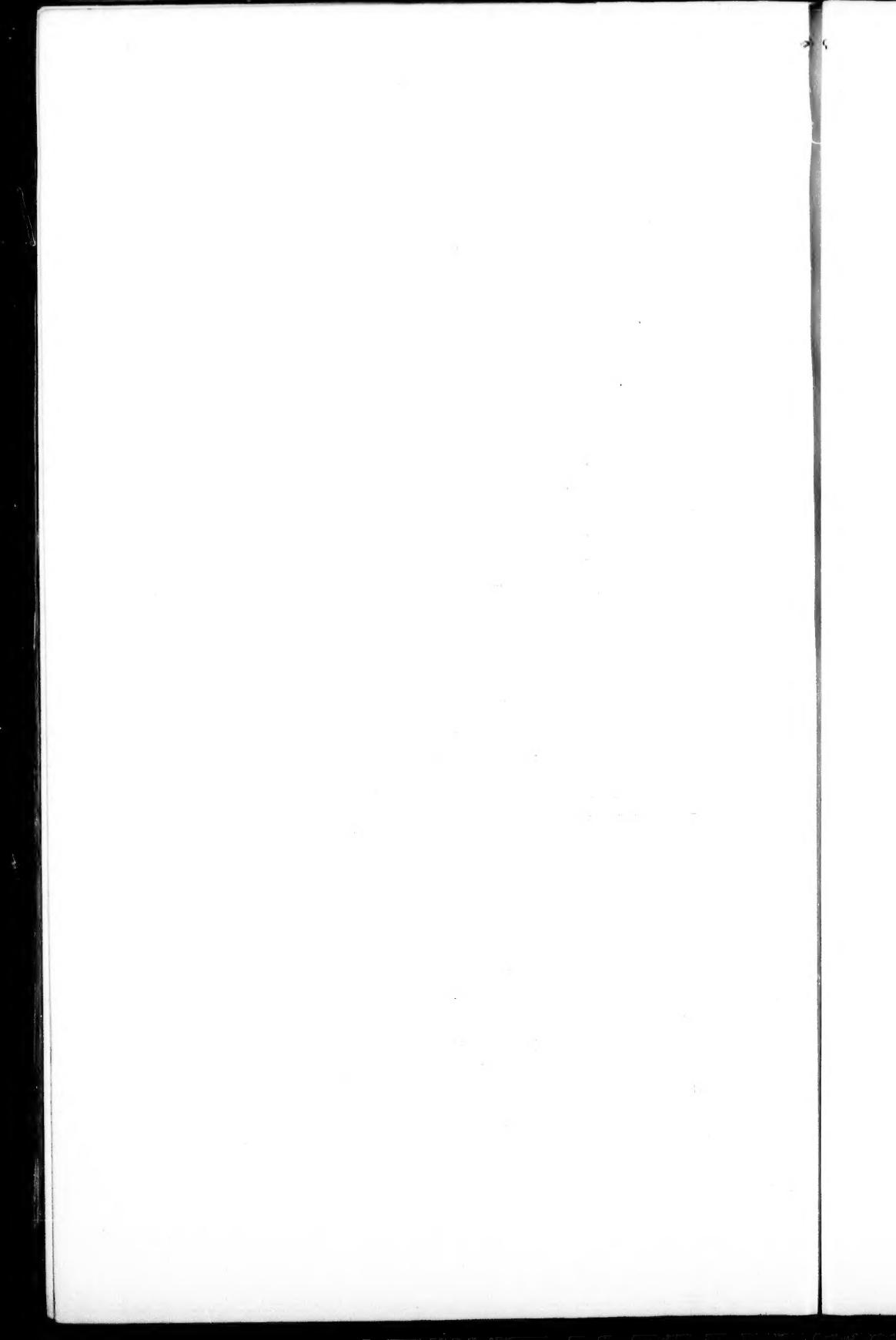
TABLE relative to Sittings of Senate during the year 1888, 1889 and 1890 :

Year.	Whole num- ber of days from opening-sittings to closing-day place*	Number of days in which sittings took place*	Number of days when adjournments took place be- fore 6 o'clock.	Number of sittings pro- tracted after 7.30 o'clock.	Number of sittings pro- tracted after midnight.	Number of adjournments during session.	Covering period, in all, of days.
1888	90	50	41	9	1	2	21
1889	92	53	47	6	1	2	17
1890	121	67	61	6	1	3	29

* It is impossible to give the exact length of a sitting each day, but the next table shows that the Senate, as a rule, rose before 6 o'clock.

APPENDIX C.

Table showing number of Private Bills sent in before the first day of the Session.	Table showing number of Private Bills sent in during the first 14 days of the Session.	Table showing number of Private Bills sent in after the 14th day of the Session.	TOTAL.
1886.....30	14	18	62
1887.....20	21	40	81
1888.....17	22	23	62
1889.....29	16	23	68
1890.....34	14	37	85



APPENDIX D.

Memo. showing total amount collected on account of Private Bill Fees, H. of C., in each of the following years :—

1886.....	\$12,976.18
1887.....	16,245.05
1888.....	13,191.22
1889.....	13,563.00
1890.....	17,135.05

In the Senate, during the past five years, on an average, 7 private bills (divorce included) have been presented each year. Therefore, about \$1500 would be an outside estimate of the private bill fees paid in that House.

APPENDIX E.

COMMONS' RULE RESPECTING THE MODEL BILL.

51A. All Private Bills for Acts of incorporation of, or in amendment of Acts incorporating Railway Companies, shall be drawn in accordance with the Model Bill adopted by the House on 23rd June, 1887, copies of which may be obtained from the Clerk of the House.

(a). The provisions contained in any Bill which are not in accord with the Model Bill, shall be inserted between brackets, and when revised by the proper officer shall be so printed, and bills which are not in accordance with this Rule shall be returned to the promoters to be recast before being revised and printed;

(b). Any sections of existing Acts which are proposed to be amended shall be reprinted in full with the amendments inserted in their proper places and between brackets;

(c). Any exceptional provisions that it may be proposed to insert in any Bill shall be clearly specified in the Notice of Application for the same,

51B. No Bill for the incorporation of a Railway Company, or for changing the route of the railway of any company already incorporated, shall be considered by the Railway Committee until there has been filed with the Committee at least one week before the consideration of the Bill:

(a). A Map or Plan drawn upon a scale of not less than half an inch to the mile, showing the location upon which it is intended to construct the proposed work, and showing also the lines of existing or authorized works of a similar character within, or in any way affecting the district, or any part thereof, which the proposed work is intended to serve, and such map or plan shall be signed by the Engineer or other person making the same;

(b). An exhibit showing the total amount of capital proposed to be raised for the purposes of the undertaking, and the manner in which it is proposed to raise the same, whether by ordinary shares, bonds, debentures, or other securities, and the amount of each, respectively.

59a. Before any Private Bill is considered by the Committee to which it may be referred, a report shall first be submitted to the Committee by the Examiner, stating that he has examined the same, and has noted, opposite each section, any variations from the provisions contained in the Model Bill; and, to insure uniformity, the Examiner shall revise and certify every Private Bill passed by the Committees, and the reports thereon, before they are presented to the House.